



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/698,621

10/30/2003

Charles Brewer

410-1-014

9892

20551

7590

10/06/2006

THORPE NORTH & WESTERN, LLP.
8180 SOUTH 700 EAST, SUITE 200
SANDY, UT 84070

EXAMINER

ALIMENTI, SUSAN C

ART UNIT

PAPER NUMBER

3644

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/698,621

Applicant(s)

BREWER ET AL.

Examiner

Susan C. Alimenti

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 22-30 is/are rejected.
- 7) ☒ Claim(s) 21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 20, the word "means" is preceded by the word "tab" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1-3, 20, 22, 24, 28, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haynes et al. (US 5,072,694) and further in view of Buxton (US 4,793,286).

Regarding claims 1 and 29, Haynes et al. (Haynes hereafter) discloses a pet house comprising a lower frame 12 with fabric 40 attached thereto forming a floor, and a substantially rigid upper frame 14 cooperable with the lower frame to form an enclosure. Frame 14 is

Art Unit: 3644

removable from both the floor portion 12, via hook members 72, 74, 76, and 88 (Haynes, col.5, ln.66, to col.6, ln.2), and cover 36 via receiving sleeves 96. The upper frame further comprises an opening 38, allowing the animal to enter and exit the enclosure. Further, hook members are readable on the "fastener portions" of claim 24, and are mated with receiving holes in 70 in cover 36, securing the cover to the pet house. While Haynes' frame is not particularly pre-shaped in the form it takes once in the sleeve, Buxton teaches such pre-shaped frame members, as best viewed in Figure 5, as equivalent structures. Buxton's frame is pre-shaped and ready to receive fabric cover 100, creating an enclosure for an animal. The substitution of a pre-shaped frame, such as that shown by Buxton, would not change the scope of Haynes device and would still provide a tent-like collapsible animal house. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace Haynes' frame with Buxton's pre-shaped frame because these two were art recognized equivalents at the time the invention was made, and one of ordinary skill would have found it obvious to replace one with the other.

Regarding claim 2, lower frame 12, forming a floor, sits spaced above the supporting floor.

Regarding claim 3, fabric 40 is considered to be air permeable.

Regarding claim 20, the means for staking the housing to a supporting surface is defined as leg 18 readily available to be staked to a ground surface, e.g. a U-shaped stake overlapping leg 18 and engaging the ground.

Regarding claim 22, cover 36 is considered to be made of a fabric material.

Regarding claim 28, when upper frame 14 is removed from floor portion 12, and open pet cot is created.

Art Unit: 3644

5. Claims 4-6, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haynes in view of Buxton, as applied above.

Haynes discloses the claimed invention except the material of the fabric is not expressly disclosed. Haynes mentions that a preferable material for the top cover is a layered quilted construction that provides insulation (col.4, lns.40-44) and the fabric for the base could be a cotton duck fabric (col.4, lns.55-56). Mesh, polyester, and nylon materials are well-known to be advantageous in devices similar to Haynes, because not only are they insulating material, but they are also washable and durable. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a mesh, polyester, or nylon material since these are known materials in the art that provide insulation and durability. Further, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 6, the lower frame is supported on legs 32, 34, 18.

6. Claims 7-15, 18-19, and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haynes in view of Buxton, as applied above, and further in view of Ventura (US 6,098,218).

Regarding claims 7-12 and 18-19, Haynes discloses the claimed invention except the frame structure is different. It is widely known that tent structures, whether used for humans or pets, are available in a wide variety of frame structures. Ventura discloses a housing in the same

Art Unit: 3644

field of invention, having a base frame structure comprising four removable legs 14 coupled to frame members 50, 51, 40 by connectors 52, 42 which are disposed at each of the four corners of the base frame. Ventura's structure allows more versatility than Haynes in collapsing the device, because all the components can be separated and compacted into a smaller traveling/storage size. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Haynes' frame structure with Ventura's, by providing the legs 32, 34, 18 as separable pieces, in order to allow the user to completely deconstruct the frame accommodating a smaller travel or storage space.

Claim 13 is rejected similarly to claims 24 and 30.

Regarding claims 14-15 and 25-26, Haynes as modified discloses the claimed invention except an additional ventilation area and flap covering the entrance is not positively disclosed. Ventura's device offers both a ventilation window 12 and a flap 12 covering the entrance to the housing. These two elements provide enhanced comfort and privacy to the user and are well known in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Haynes' housing by adding a ventilation window in order to provide air flow in hot climates and a flap covering the entrance in order to prevent the animal from being disturbed or scared from external influences.

7. Claims 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haynes in view of Buxton, in view of Ventura as applied to claim 14 above, and further in view of Widrich (US 6,338,314).

Art Unit: 3644

Haynes, as modified, discloses the claimed invention except there is not a pad added to the base fabric 40. Widrich discloses a pet housing wherein a frame 40 is fitted with a fabric and a pillow top is supplied adding comfort and insulation for the pet. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Haynes' device by adding a pillow top to the base fabric 40 in order to provide additional comfort and insulation for the pet.

Regarding claim 17, the pillow top is considered to be removable insulating material.

8. Claims 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haynes in view of Buxton, as applied to claim 1 above, and further in view of Widrich.

Haynes, as modified, discloses the claimed invention except there is not a pad added to the base fabric 40. Widrich discloses a pet housing wherein a frame 40 is fitted with a fabric and a pillow top is supplied adding comfort and insulation for the pet. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Haynes' device by adding a pillow top to the base fabric 40 in order to provide additional comfort and insulation for the pet.

Response to Arguments

9. Applicant's arguments filed 07 August 2006 have been fully considered but they are not persuasive. Applicant first argues that Haynes does not disclose the claimed invention because

"Claims 24 and 30 require that the 'fastener portions' are secured to the 'fabric pet supporting floor.' As previously pointed out, however, Haynes et al.'s hooks

Art Unit: 3644

are attached to Haynes et al.'s bed device frame which would equate to applicant's 'lower frame,' and not to Haynes et al.'s fabric bed 40 which equates to applicant's 'fabric pet supporting floor,'" (Arguments, 8/7/06, p.1).

The examiner respectfully disagrees and points out that recently amended claim 1, lines 8 & 9, recites that fastener portions on the cover mate with fastener portions secured to the fabric of the pet supporting floor. As explained above hook members 72 are fasteners, which are in fact secured to the pet supporting floor 40. Cover fastener portions (apertures 70, Figure 2) mate with the fastener portions 72. It is maintained that Haynes is still readable on the claimed invention.

Regarding claim 20, upon reexamination of said claim and the limitation of a "tab means" the examiner has herein rejected said limitation under 35 U.S.C 112(2nd) as being indefinite, since it can not properly be determined what is actually defined by such a term. The examiner maintains that claim 20, as best understood, is still unpatentable over Hayes.

Allowable Subject Matter

10. Claim 21 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 571-272-6897.

The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Susan C. Alimenti



TERI PHAM LUU
SUPERVISORY
PRIMARY EXAMINER